

December 20, 2011

MEMO

To: Maggie Glowacki, DPD  
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Fr: Ellie Ziegler, Sound Transit

Re: Sound Transit comments on Seattle's October Draft SMP

Thank you for reviewing and responding to the comments in my May 23, 2011 memo to you, which provided Sound Transit's concerns with the February draft of the new SMP. We have carefully reviewed DPD's responses to Sound Transit's concerns, as well as the relevant portions of the new October draft of the SMP. We are grateful that the October draft does not require either a special use permit or a conditional use permit for rail transit facilities, but have a few significant remaining concerns.

Included with this memo are suggested changes to the language of the SMP that would address our concerns. These edits are provided in track changes in the two documents (Attachments A and B). We realize that you have many other comments and revisions to address through the update process so our intent with providing suggestions for new SMP language is to try to make it easier for you to respond to our comments. We understand there may be other ways to revise the SMP language that would also address our concerns.

The following is a summary of Sound Transit's outstanding concerns with the October draft:

**Proposed SMC 23.60.196.C.4 and SMC 23.60.208.F should not apply to light rail transit facilities**

My May 23<sup>rd</sup> memo to you summarized how Sound Transit and DPD jointly drafted the language that was adopted by the City Council and approved by the Department of Ecology in 2006 and 2007. DPD's response, in effect, is to note that the draft SMP no longer requires special use or conditional use approval for Sound Transit facilities. Sound Transit agrees that this change helps address its concerns, but proposed SMC 23.60.196.C.4 and proposed SMC 23.60.208.F are still objectionable to Sound Transit. Proposed SMC 23.60.196.C.4 states (emphasis added):

C. In mitigating impacts from bridges, including approaches to bridges, impacts shall be applied in the following sequence:

4. The route of the bridge (sic) or tunnel and appurtenant structures shall be sited in the locations that has (sic) the *least possible adverse effect on unique or fragile shoreline features*.

We do not understand what it means to say “impacts shall be applied” in this manner. If the intent is that this limitation on siting is simply one way among many in which impacts may be “avoided,” this language can be acceptable to Sound Transit so long as changes are made to subsections 4 and 5 as proposed in attachment A to this memo.

Sound Transit is even more concerned, however, with proposed SMC 23.60.208.F, which not only includes comparable language about “least possible adverse effects” but also includes a prohibition on adverse impacts to existing water-dependent or water-related uses:

F. All new railroad and rail transit facilities routes and appurtenant structures shall be sited in the locations that have the *least possible adverse effect on unique or fragile shoreline features* and *do not adversely impact existing or planned water-dependent or water-related uses*.

(Emphasis added) This standard is not appropriate for a regional, linear essential public facility. For example, last week the Sound Transit Board authorized the study of potential light rail service from Ballard to downtown Seattle. If such a line is put into service in the future, a new bridge over the Ship Canal would likely be required. If so, the decision about the appropriate route for the light rail line, and the appropriate location for the bridge, will require the Sound Transit Board and the Seattle City Council to weigh many competing factors. Given all the factors that must be weighed, it may be that the only feasible location for a new bridge will *not* be the one location in the Ship Canal where the bridge will have “the least possible adverse effect on unique or fragile shoreline features.” As drafted, 23.60.208.F would in effect, make “unique or fragile shoreline features” more important than all other the factors together that must go into a decision about the route of a linear transportation facility.

In addition, the only feasible location for a light rail bridge over the Ship Canal may well be in a place where there will be an adverse impact on water-dependent or water-related uses. A few years ago, DPD issued a shoreline substantial development permit for a new bridge for the Seattle Monorail just west of the existing Ballard bridge, at the location where the Seattle Popular Monorail Authority and the Seattle City Council determined the bridge should be built. That location had an adverse effect on the operations of the boat repair facility that has been located for many years on the south side of the Ship Canal next to the bridge, to the extent that the facility may have had to relocate if the Monorail bridge had been constructed. If the proposed SMC 23.60.208.F had been in effect at the time, DPD could not have approved the shoreline permit for the Monorail bridge even though the bridge had been approved by the City Council. Given the fact that most of the uses along the Ship Canal are water-dependent or water-related, there likely would be *no* location where a new light rail bridge could be permitted.

Any north-south light rail system in Seattle must cross through the shoreline district, and the proposed SMP would almost certainly preclude the siting of this essential public facility at any feasible location in the City.

DPD’s Response #3 to our earlier comments argues that the Shoreline Guidelines in Chapter 173-26 WAC “require a review of locational decisions (and were adopted after the City and Sound Transit developed the City’s regulations).” Neither part of this assertion is correct.

The first Guideline cited by DPD, 173-26-221(2)(c)(iii)(C), applies only to structures that intrude into or over critical *saltwater* habitat, and there is no comparable guideline for critical freshwater habitat. Any foreseeable Sound Transit bridge through a shoreline environment in Seattle would be through or over freshwater habitat.

The second cited Guideline, 173-26-241(3)(k) includes the language about “least possible adverse effect on unique or fragile shoreline features” that DPD proposes to give regulatory effect to in proposed SMC 23.60.196.C.4 and proposed SMC 23.60.208.F. But this section of the Guideline is a *guideline*, not a regulation, and it is to be used by DOE as one of the “criteria for state review” of the SMP, as stated in WAC 173-26-171(2). Nothing in the SMA or the DOE Guidelines requires the City to give regulatory effect to any particular Guideline, because those Guidelines are intended to guide the exercise of local discretion in light of local circumstances.

DPD’s Response #3 also states that these two cited sections of the WAC “were adopted after the City and Sound Transit developed the City’s regulations,” thereby suggesting that the regulations in the current SMP are no longer consistent with the Guidelines. This also is not correct. The language in the current SMP was jointly developed by DPD and Sound Transit and was approved by the City Council on August 14, 2006 and on July 30, 2007, and approved by DOE after those dates. Although the Guidelines have been amended since 2007, the language cited by DPD has been in the Guidelines since January 17, 2004, and therefore was in place when DOE approved the existing regulations. DOE’s previous approval demonstrate that the existing regulations are consistent with the existing Guidelines, and there has been no change in the Guidelines or other circumstances that requires or justifies a change in how the City regulates light rail transit facilities.

The shoreline regulations will become part of the City’s GMA-required development regulations, and the SMP must be consistent with these other regulations. The City’s existing regulations for essential public facilities are in SMC 23.80.004, which DPD does not propose to amend, and subsection C addresses light rail transit facilities (emphasis added):

C. Light rail transit facilities.

1. Light rail transit facilities necessary to support the operation and maintenance of a light rail transit system are permitted in all zones and shoreline environments within the City of Seattle.
2. The Director may approve a light rail transit facility pursuant to Chapter 23.76, Master Use Permits and Council Land Use Decisions only if the alignment, transit station locations, and maintenance base location of the light rail transit system have been *approved by the City Council* by ordinance or resolution.

The Sound Transit Board will decide the alignment and location of the light rail system, and the City Council would approve the selected alignment before Sound Transit applies for permits from DPD. The proposed language in the October draft proposed to make the criterion in the Guidelines regulatory, by requiring that the locations of light rail system facilities within the shoreline district have “the least possible adverse effect on unique or fragile shoreline features and do not adversely impact existing or planned water-dependent or water-related uses”.

In effect, the proposed language would take the final decision about the alignment and location of light rail transit facilities away from the Sound Transit Board, and the City Council and give it to DPD. In the event of an appeal to the Shorelines Hearings Board, would likely apply the requirement narrowly, instead of weighing and balancing all of the factors that must go into the selection of a route for a regional, linear transportation facility.

In short, proposed SMC 23.60.208.F is not required by the Guidelines; is not consistent with the City's regulation of Sound Transit as an essential public facility in SMC 23.80.004; and likely will preclude the siting of a light rail transit bridge in any feasible location. Sound Transit requests that DPD delete proposed SMC 23.60.208.F, at least to the extent that it applies to light rail transit facilities.

**The SMP should retain the existing language in SMC 23.60.090.J and should address "rail transit facilities" in a different section from railroads**

The proposed SMP deletes subsection J of existing 23.60.090:

J. Light rail transit facilities approved pursuant to subsection 23.80.004 C are permitted uses in all shoreline environments, and light rail bridges and tunnels are water-dependent uses when they must cross a body of water regulated by Chapter 23.60. A temporary structure or use that supports the construction of a light rail transit facility and that is approved pursuant to Section 23.42.040 F is permitted as a temporary structure or use in all shoreline environments.

Sound Transit submits that this existing language (previously agreed to by the City and approved by Ecology) is needed to make clear the status of light rail transit facilities in the shoreline, and to coordinate the regulation of light rail transit facilities in the SMP with the regulations in the essential public facility chapter of the land use Code. We propose that it be included in a new section 23.60.209, "Standards for rail transit facilities," that is specific to rail transit facilities, and that the word "Light" be deleted so that, consistently with the other sections of the new SMP, it refers to "Rail transit facilities". Railroads then would be addressed separately in a revised 23.60.208, which would no longer include references to rail transit, as illustrated in attachment A to this memo.

In the proposed new 23.60.209, we have included the language from section 208 that is applicable to rail transit facilities, and have deleted subsection 208.F for the reasons discussed above.

We propose three other substantive changes. The existing subsection D of 23.60.208 states:

D. Where possible, new rail transit facilities in the Shoreline District shall use existing highway or rail corridors.

The phrase "Where possible" is an absolute standard that is not appropriate for a siting decision that requires the Sound Transit Board and the City Council to weigh many competing factors. We suggest that in the new section 209 this language be changed to read:

C. Where reasonably possible, new rail transit facilities in the Shoreline District should use existing highway or rail corridors.

Subsection E of proposed 23.60.208 states:

E. All new railroads and rail transit facilities are required to provide means for the public to overcome the physical barrier created by the facility and gain access to the shoreline.

This is a mandatory requirement, and it appears intended to address the kinds of physical barriers that arise from linear transportation facilities *along* the shoreline; it is not at all clear what this mandatory requirement would mean for a linear transportation facility that crosses directly through the shoreline district in order to get from one side of a water body to the other side. We propose that the comparable subsection D in proposed 23.60.209 read:

D. Rail transit facilities located parallel to the shoreline are required to provide means for the public to overcome the physical barrier created by the facility and gain access to the shoreline.

Finally, in the new section 209 we deleted subsection G from 208, regarding intermittent or temporary uses, because subsection G will not be applicable to rail transit facilities approved pursuant to 23.80.004.C, as Sound Transit's facilities will be.

**The SMP should not regulate Sound Transit's facilities differently from other rail transit facilities**

In the proposed new section 23.60.209, and throughout the new master program, Sound Transit requests that its facilities be referred to as "rail transit facilities," which is defined in SMC 23.84A.038 as one kind of "transportation facility," and which encompasses the defined terms "light rail transit facility," "light rail transit station," and "light rail transit system." We do not believe there is a reason to use different terms in the SMP.

We also suggest that it is legally questionable to draw a regulatory distinction based upon ownership rather than use, as does the proposed distinction between "Sound Transit facilities" and "other rail transit facilities" that appears in a number of places in the proposed use tables. For the foreseeable future, the only rail transit facilities that will be located within Seattle are Sound Transit's facilities, or those of a successor entity created by the state legislature. Sound Transit suggests that the proposed distinction is unnecessary as well as legally questionable, and that the proposed use tables should be revised accordingly, as demonstrated in attachment B to this memo.

**Proposed 23.60.157 regarding Essential Public Facilities is ambiguous and unnecessary**

Proposed 23.60.157.B states:

Essential public facilities are required to comply with development standards in this chapter for each component of the essential public facility and to mitigate all adverse impacts to the ecological functions of shorelines and critical areas by

applying mitigation sequencing set forth in Section 23.60.158. Mitigation sequencing does not apply to the scope of the project but does apply to the siting of specific project components of the project.

We do not understand what is meant by the statement in the last sentence that “Mitigation sequencing does not apply to the scope of the project . . .”

We also question whether it is appropriate to include a section in the SMP addressing essential public facilities when the City comprehensively regulates such facilities in chapter 23.80 of its Code, and when DPD is in the process of updating chapter 23.80 independently of its update to the SMP. Sound Transit proposes that this section be deleted.

**Proposed 23.60.158, regarding mitigation sequencing, is confusing**

We appreciate the changes made in the current draft to the language regarding mitigation sequencing. However proposed 23.60.158.D is confusing:

Each component of the mitigation proposed to meet the requirements of Step E of subsection 23.60.158.C shall be consistent with the standards for the shoreline environment where the mitigation action will occur and with all regulations applicable to the type of each component of the mitigation undertaken.

We do not understand the meaning and effect of the last clause – “all regulations applicable to the type of each component of the mitigation undertaken.”

**Proposed 23.60.252 should not apply to light rail transit facilities**

The use table for the CP environment in 23.60.252 allows rail transit facilities in that environment only on existing bridges or if no other feasible option exists, and bridges containing streets are prohibited. We suggest that the language regarding rail transit facilities be modified to allow more flexibility about how rail transit might be provided in the future and to be consistent with how light rail is treated in the other shoreline environments:

C. Rail transit facilities are allowed on bridges within existing bridge corridors. Bridges containing railroads and streets are prohibited. Tunnels are allowed if no permanent adverse impacts to the shoreline environment occurs.

D. Rail transit facilities are allowed if located in a tunnel or within an existing bridge corridor.

Thank you for your consideration of Sound Transit’s comments and concerns regarding the proposed draft SMP. We would welcome the opportunity to work with DPD, as we have done in the past, with regard to the sections of the proposed SMP that directly affect Sound Transit. If you have any questions or need additional information, please feel free to contact me at (206) 398-5135 or [ellie.ziegler@soundtransit.org](mailto:ellie.ziegler@soundtransit.org).